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Catechism of the Constitution of the U.S.

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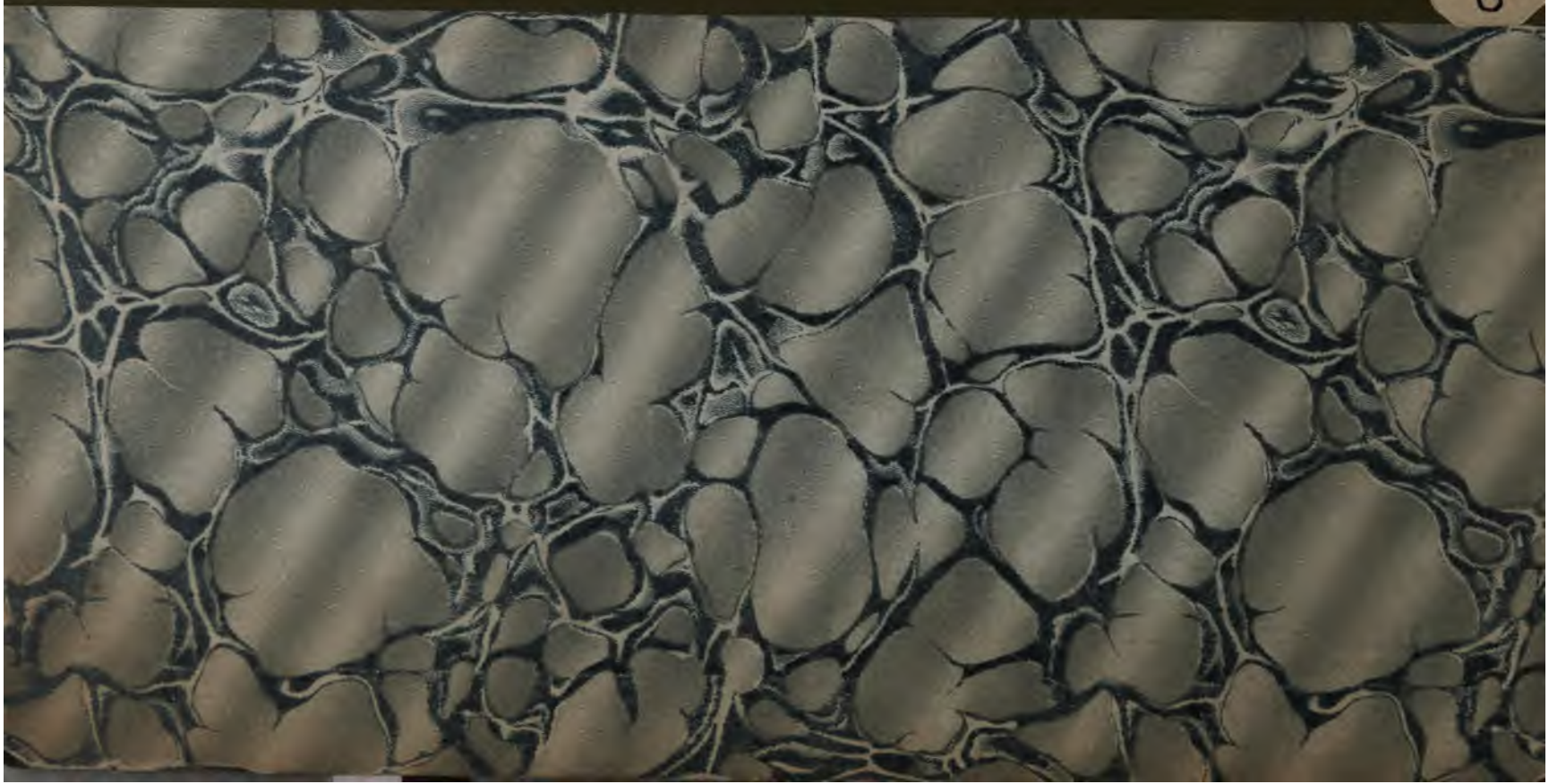

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FROM

Roger Sherman Hoar

With the respects of the author

(Strictly confidential)

CATECHISM

OF THE

Constitution of the United States.

A BRIEF EXPOSITION OF THE TRUE ELEMENTARY PRINCIPLES OF THAT GREAT COMPACT BETWEEN SOVEREIGN STATES.

[By an Aged Friend of the Author (John Rutledge) of the United States Constitution.]

1st. "To secure their rights, governments are instituted amongst men, deriving their just powers from the consent of the governed, and whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute a new government." [Declaration of Independence.

2d. "Whenever the General Government assumes undelegated powers, its acts are unauthorized, void and of no force; to this compact each State acceded as a State, and is an integral party, and each State has the right to judge for itself, as well of the infractions as of the mode and measure of redress."—[Jefferson's Kentucky and Madison's Virginia Resolutions of '98 and '99.

3d. "Three of the original States, New York, Virginia and Rhode Island, in their ratification and adoption of the United States Constitution, expressly reserved the right 'to reassume the powers therein delegated whenever perverted to the injury of the people.' This was a condition precedent under which they were admitted by the other parties, consequently this condition became part of the compact or Constitution itself."—Justinian.

4th. "This compact, if broken on one side, is broken on all sides."—[Webster's Great Speech at Capon Springs, Virginia.

5th. "The agency at Washington is our *Department of Foreign Affairs*."—[Jefferson.

6th. "Power is always stealing from the many to the few."—[Patrick Henry.

J. R. Truth is eternal & cannot be destroyed by force of arms. Jefferson

"*Intentio legislatorum est lex.*" (Lord Coke.)

"*Contemporanea expositio est optima in lege.*" (Id.)

"*Delegata potestas non potest delegari.*" (Id.)

1863.

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Roger Sherman Hoar

PREFACE.

To one who has carefully studied the Constitution of the United States and the Journal of the Convention which framed that compact between sovereign States, it is a subject of profound astonishment how ignorant the majority of our educated citizens, and even the majority of our lawyers, are of the true nature, the principles, and the formation of that strictly limited charter delegating certain definite powers to our agents at Washington. So great is this ignorance of the true history of the Constitution, and particularly in the Northern States, where the Journal of the Convention seems never to have been studied, or even read, that this writer has never found any northern man, however well educated, who could answer the question of "who was the author of the Constitution?" The reply has invariably been that James Madison was the author, or writer, and that he had usually been styled the father of the Constitution; whereas the simple fact is that he had nothing whatever to do with the authorship or writing of that celebrated instrument.* It is clearly shown by the Journal of the Convention that the first plan of a Constitution or form of government was submitted by Charles Pinckney, of South Carolina, which plan was referred to a committee, of which the eminent statesman, John Rutledge, of South Carolina, was the chairman. On August 6, 1787, he reported the present Constitution, which was (with a few trifling alterations,) finally adopted by the Convention. It is well known at the South that John Rutledge was the author of that great document. He had been Chief Justice under the Confederation, and had also been President of South Carolina. In spite of the clear and direct record of that Journal, this ignorance of the authorship seems to be almost universal. It has been frequently and most erroneously attributed to Jas. Madison, who, in fact, was not even upon the committee which framed and reported the Constitution, but was (as himself declares) so constantly occupied in writing his own Journal and Commentaries, that he had not time even to participate to any extent in the debates of the Convention. It being thus undeniably shown by the Journal of the Convention that both the original plan and the complete Constitution were written by distinguished citizens of South Carolina, it has been claimed for that State that their interpretation as well as that of the great Calhoun, (being that of Jefferson and Madison,) is the correct construction of that great charter or compact of government.

WASHINGTON, January, 1860.

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* Mr. Madison was called the father of the Constitution, 1st, because he was the first to propose the Convention for forming the present Constitution, or "*new Articles of Union*," (as he termed it.) 2dly, because he was its most strenuous and influential advocate, both in the General Convention, and in the Virginia Convention, where he carried it against the ablest men of Virginia, and especially Patrick Henry, who then predicted that a few demagogues in Congress would lead a party majority to usurp all power, and attempt to destroy the Executive and the Judiciary. 3dly, because his able essays in the "*Federalist*," and his untiring correspondence greatly influenced the other States to adopt these "*new Articles of Union*," many of those States being strongly opposed to delegating or entrusting the specified powers to the general agency or Federal Government, lest they should attempt to encroach upon their sovereign rights.

Catechism of the Constitution of the United States.

Question 1*st*—When and how was the Constitution of the United States formed?

Answer 1*st*—The original thirteen States, which had previously established the Articles of Confederation, agreed to elect seperately, each by its own people, delegates to a general Convention of the several States, to be held at Philadelphia, for the purpose of forming between themselves a constitution or compact of government. This Convention accordingly assembled at Philadelphia on the 14th of May, 1787, and the present Constitution was drawn up and reported by Mr. John Rutledge, of South Carolina, and was finally agreed upon on the 7th of September, 1787. In this Convention the delegates of the several States determined that each State, being a separate sovereignty, should have one vote, the smallest equally with the largest. In consequence of this equality of sovereignty, the two smallest States, viz: Rhode Island and Delaware, at all times outvoted the great State of New York, with five times their population—thus conclusively showing that a majority of the whole people of this country had nothing whatever to do with the formation of the United States Constitution. (See journals of the Convention.)

Question 2*d*—By whom was the Constitution of the United States written?

Answer 2*d*—The original draft, or "Plan of a Federal Constitution," was (on the 9th of May, 1787) presented to the Convention by the distinguished Charles Pinckney, of South Carolin. But the complete report of the present United States Constitution was written, and on the 6th of August, 1787, submitted to the Convention by the chairman of a special committee, the eminent statesman, John Rutledge of South Carolina, who had been Chief Justice under the old Confederation, and who had in the first Convention of the Colonies, (held at New York, in 1765, called the "Stamp Act Congress,") written the celebrated memorial to Parliament, and afterwards the Constitution of South Carolina, of which separate sovereign State he was President from 1773 to 1778, and, in 1795, Chief Justice of the United States. The descendants of these two distinguished statesmen have claimed for South Carolina that their known interpretation (being its authors) as well as that of the great statesmen, J. C. Calhoun, McDuffie, Preston, Hamilton and others, of South Carolina, is (like that of Jefferson and Madison) to be accepted as the true construction.

Question 3*d*—How was this Constitution ratified and adopted?

Answer 3*d*—The General Convention of the Thirteen original States agreed and determined that whenever the separate Conventions of nine of these several States, as sovereignties, should ratify this Constitution, it should be considered as finally established, and should at once go into full operation. At that period the nine smallest States possessed a smaller population than the four largest States. From

this, it is evident that a majority of the whole people of this country had no authority or right to adopt, and no part in adopting and establishing the Constitution of the United States. This simple fact is in itself a complete refutation of the absurd and unfounded dogma of the Consolidationists, that the government established by this constitutional compact is to be considered a solid national government, established by a majority of the people of this country. Upon this question the greatest intellect America has ever produced uttered these irrefutable axioms: "The Convention which formed the Constitutton was called by the Congress of the Confedration. That Congress derived its authority from the Articles of the Confederation, and these from the unanimous agreement of the several States, not from the numerical majority either of the several States or of their population. It voted by delegations, each counting *one*. A majority of each delegation decided the vote of its respective State. Each State (without regard to population) had thus one equal vote. The Confederacy consisted of Thirteen States, and, of course, it was in the power of any seven of the smallest (as well as the largest) to defeat the call of the Convention, and, consequently, the formation of the Constitution. By the first census, in 1790, (three years after the call,) the population of the United States amounted to 3,394,563. The population of the seven smallest States was 950,801—less than one-third the whole—so that less than one-third the population could have defeated the call of the Convention. The Convention also voted by States, and it required a majority of the delegations present to adopt the Constitution. There were twelve States represented, (Rhode Island being absent,) so that the votes of seven delegations (or States) were required, and, of course, less than one-third the population of the whole could have defeated the formation of the Constitution. The plan, when thus adopted, had again to be submitted to the Congress of the Confederation to receive its sanction before it could be submitted to the several States for their ratification. The delegations of the seven smallest States, with less than one-third the population, could again have defeated by refusing to submit it to the several States; and, stranger still, when submitted, it required, by express provision, the concurrence of nine of the thirteen States to establish it '*between the States ratifying it*,' which put it in the power of any four States (the smallest as well as the largest) to reject it. The four smallest, viz: Delaware, Rhode Island, Georgia and New Hampshire, contained a population of only 336,048—but little more than one-eleventh of the whole, and they could have defeated it by preventing its ratification. It thus appears that a numerical majority of the population had no agency in the process of forming or adopting the Constitution, and that neither this or a majority of the States constituted an element in its ratification and adoption. So also, in regard to amendments; they cannot become a part of the Constitution unless adopted by the Legislatures of three-fourths of the States. As there are at present thirty States in this Union, it will take twenty to propose and eleven to defeat a proposition to amend the Constitution, or nineteen votes in the Senate, (if it originates in Congress.) While in the one case one-eighth of the population can prevent the adoption of a proposition to amend the Constitution, less than one-quarter can, in the other case, adopt it. To ratify the proposed

amendment requires three-fourths of the States, which, with the present number, makes the concurrence of twenty-three States necessary. This puts it in the power of any eight States to defeat it. The population of the eight smallest States is only 776,969, and yet they can prevent amendments, against the votes of twenty-two States, with a population of 15,410,635, or nearly twenty times their number. Twenty-three of the smallest States, with a population of about seven millions, can amend the Constitution against the votes of the other seven, with a population of about nine millions. So thhat a minority of the population can amend the Constitution against a decided majority, whilst one-nineteenth of the population can prevent the other eighteen-nineteenths from amending it; and any one small State, (as Delaware,) with a population of only 77,043, can prevent the other twenty-nine States, with a population of over 16,000,000, from so amending the Constitution as to deprive the States of an equality of representation in the Senate, Again, the sixteen smallest States, with a population of about 3,000,000, (a little more than one-fifth of the whole,) can, in effect, destroy the government and dissolve the Union, by simply declining to appoint Senators, against the united voice of nearly 13,000,000—about four-fifths of the whole. These results incontestably prove that this is truly a Federal and not a national government, made by the several States, and that States and not individuals are its constituents."

Question 4th—Did any of the original States decline to ratify and adopt the Constitution of the United States?

Answer 4th—The States of Rhode Island and North Carolina refused to ratify the Constitution, and remained as sepatate and independent sovereignties for more than a year, and, if they had so chosen, might have so remained to this day. This fact alone forms another perfect refutation of the doctrine of the nationalists, that the Constitution was not a compact between separate sovereign States, but a government established by a majority of the whole people.

Question 5th—Did not each State act separately and independently in ratifying and adopting the Constitution?

Answer 5th—The separate Conventions of each separate State adopted the Constitution without any consultation, or conjoint action with any other State, and without any reference to population.

Question 6th—Did any of the States annex conditions to their acceptance of the Constitution?

Answer 6th—The States of New York, Virginia and Rhode Island expressly annexed to their ratifications the condition that they "reserved to themselves the right to re-assume the powers delegated whenever they should be perverted to the iujury of the people"

Question 7th—Did not this condition precedent, therefore form a part of the Constitntion of the United States?

Answer 7th—It is an elementary principle of law that wherever one or more parties to any instrument or agreement, annex a condition, and are admitted with this condition, by the other parties, such condition becomes necessarly a part of the contract itself. It is, therefore, evident that this right to withdraw, or secede, is an essential component part of the Constitution itsslf.

Question 8th—Is not this sovereign right of each State asserted and maintaincd by Jefferson and Madison?

Answer 8th—The most celebrated productions of Jefferson and Madison, viz: the Kentucky and Virginia Resolutions of '98 and '99 (which are universally regarded as the ablest expositions of the Constitution) expressly declare that "in all infractions of the Constitution by the General Government, each State (as a sovereign creator) has a right to judge as well of the infractions as of the mode and measure of redress." The Virginia Resolutions of '98 assert the following irrefutable principles:—"This Assembly doth explicitly declare that it views the powers of the Federal Government, as resulting from the compact to which the States are parties, as limited by the plain sense and intention of the instrument constituting the compact, and no further valid than are authorized by the grants enumerated in that compact; and that in case of a deliberate, palpable and dangerous exercise of powers not granted by said compact, the States, who are parties thereto, have *the right, and are in duty bound to interpose* for arresting the progress of the evil, and for maintaining within their respective limits the authorities, rights and liberties appertaining thereto." The Kentucky Resolutions of '98 assert the same principles in the following words:—"That the several States composing the United States of America are not united on the principle of unlimited submission to their General Government; but that by a compact, under the style and title of a Constitution for the United States, and of amendments thereto, they contituted a General Government, for *special purposes*, delegated to that Government certain *definite* powers, reserving, each State to itself, the residuary mass of powers to their own self-government; and that whensoever the General Government assumes undelegated powers, its acts are *unauthorized, void and of no force*; that to this compact each State acceded as a State and as an integral party; that this government, created by this compact, was not made the exclusive or final judge of the extent of the powers delegated to itself, since that would have made its *discretion* and not the Constitution the measure of its powers; but that, as in all other cases of compact among parties having no common judge, each party has an equal right to judge for itself, as well of infractions as of the *mode and measure of redress.*"

The Kentucky Resolutions of 1799 declare as follows, that:—"If those who administer the General Government be permitted to transgress the limits fixed by the compact, by a total disregard of the special delegations of power therein contained, an annihilation of the State governments and the creation upon their ruins of a general consolidated government will be the inevitable consequence. That the principle and construction contended for by some of the State Legislatures, that the General Government is the execlusive judge of the extent of the powers delegated to it, stop *nothing short of despotism*—since the discretion of those who administer the government, and not the Constitution, would be the measure of their powers; that the several States who formed that instrument, being sovereign and independent, have the unquestionable right to judge of the infraction; and that a nullification by those sovereignties of all unauthorized acts done under color of that instrument is the *rightful remedy.*"—Rawl, in his able work on the Constitution, says the right of a State to withdraw is inherent in the federal system.

Question 9th—Did the Constiutiton of the United States have any validity or effect in any State not adopting it?

Answer 9th—The 7th Article of the Constitution expressly declares that "the ratifications of the Conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same." The States of Rhode Island and North Carolina did not ratify, but remained as separate and independent sovereignties, unaffected by the votes of a majority of the States or of the people. This fact alone is conclusive as to State sovereignty.

Question 10th—When the Thirteen Colonies declared their independence, did they not then become thirteen independent States?

Answer 10th—The Thirteen Colonies (afterwards the thirteen original Staes,) declared their independence by the separate and distinct name and designation of each Colony or State, (viz., Massachusetts, Rhode Island, &c., &c.,) which States then had no political connection with each other, each continued for several years to act as a distinct and separate sovereign State; and as sovereignty cannot remain in abeyance, it necessarily then resided in the people of each of these several separate States.

Question 11th—Did not both France and Great Britain acknowledge the independence of the previous Colonies by each of their several names, as being so many sovereign and independent States?

Answer 11th—The recognition of both France and Great Britain designated each State by its separate name (viz., Massachusetts, Rhode Island, &c.,) as so many "independent and sovereign States."

Question 12th—Did not the State of South Carolina elect John Rutledge President of South Carolina, and did she not fight the battle of Fort Moultrie with her own forces—and did she not make a treaty with France as a sovereign State?

Answer 12th—Early in the year 1776, (before the general declaration of independence by all the States,) South Carolina declared her separate independence, appointed John Rutledge her President, and raised her own forces, with which forces she fought the battle of Fort Moultrie;* and the commissions of General Moultrie, General Marion General Sumter, and every other officer of that period, were signed "John Rutledge, President of South Carolina." That State also entered into a treaty with France, and acted in all respects as a separate sovereign and independent State, and as such formed a confederacy with the other separate States, in the year 1780, by ratifying the Articles of the Confederation. These articles, in adopting the title of United States, expressly declare that "each State retains its sovereignty and independence, and all powers not expressly delegated." In the year 1765, certain citizens of Charleston, South Carolina, forming a company, seized and destroyed the British stamps in Fort Johnson, having in open day and without any disguise, surprised the garrison and taken the fort, ten years before the clandestine seizure of the tea at Boston, on board of a peaceful merchant vessel, by some hundreds of citizens disguised as Indians.

Question 13th—Have the whole people of North America, or of these United States collectively, ever met together to elect delegates to

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* This glorious battle and victory occurred on 20th June, 1776.

any convention, or congress, or any assembly whatever, either to form a constitution, or for any other purpose whatever? Have they, as one people, ever elected members of Congress, or electors of President, or done one single act whatever as one people?

Answer 13*th*—The delegates to the Convention which formed the Constitution were elected by the separate people of each separate State. In that Convention each State had but one vote, wholly and entirely irrespective of population, so that the smaller States, being more numerous, always outvoted the largest States. Thus the Constitution was formed by a minority of the people of the whole country. Each of the States separately elects members of Congress and electors of President, and every other elective officer. None of these officers can, under the Constitution, be elected by the majority of the people of this country voting collectively. How futile and unfounded, then, is the doctrine of the Consolidation party, that the Government of these United States is that of one undivided nation!

Question 14*th*—What is the true definition of sovereignty?

Answer 14*th*—Sovereignty is properly the fundamental, constitution-making, government-making power, which resides only in the people of each separate State, and can only be exercised or delegated by them. This power is, by and through the elections of these separate peoples, delegated to, and embodied in, and can ouly be exercised by the primordial organic conventions of the people of each State. In this way the thirteen original States, each acting separately for itself, formed the old Confederacy of 1778-'81, and thus each separate State, in its organic convention, adopted the Constitution of 1787, which conventions alone gave to it any validity and power, irrespective of any majority of the whole people.

Question 15*th*—Can the Government (or agency) at Washington, or any other constitutional government, be regarded, in any sense, as sovereign?

Answer 15*th*—As above stated, sovereignty resides only in the people of each separate State, (that is, in the government-making power,) and can only be exercised by the organic convention of each State. Governments are merely the creatures and agents of these sovereignties, deriving their only powers from them, and are only authorized to exercise, for their creators some certain specified and delegated powers of sovereignty—such as the declaration and conduct of war, and of commerce. Government possesses of itself no inherent sovereignty, and the proposition that sovereignty can exist in an agency is an utter absurdity.

Question 16*th*—Is it not, therefore, a solecism to speak of allegiance being due to a government, or agency?

Answer 16*th*—Allegiance is properly defined to be "the duty of a subject to a sovereign;" and, as sovereignty resides only in the people of each separate State, and is only embodied in their primordial, organic, government-making conventions, it is only there that allegiance is due.

Question 17*th*—What then is the duty that citizens owe to their government and laws?

Answer 17*th*—Citizens owe obedience to their government, and to all constitutional laws; but allegiance is only due to sovereignty.

Question 18*th*—Can a sovereign State commit treason against its government, or agency, created by itself?

Answer 18*th*—Treason is properly defined to be the breach of allegiance; and, as allegiance is simply the duty of a subject to a sovereign, it is absurd to contend that a sovereign State can commit treason, and especially against its own creature or agency!

Question 19*th*—Can a citizen of either of the States, in obeying the edicts of his sovereign organic Convention, commit treason against the General Agency, or Government at Washington?

Answer 19*th*—Most assuredly not. The Constitution declares treason to be the "levying war (of course, by citizens within the Union,) against the United States," and not against the General Government, or agency at Washington, and especially not after that government has been abjured and cast off by his own sovereign State. The citizen within the Union must have levied war against the collective States, and without the sovereiegn authority of his own State, in order to constitute treason. But, when a sovereign State secedes from a confederacy or Union with other States, by the organic action of her primordial Convention, her citizens are no longer citizens of the United States, and, therefore, cannot commit treason against what has then become a foreign government.

Question 20*th*—Does not the Federal Constitution require three-fourths of the States to ratify any amendment to that instrument?

Answer 20*th*—The Constitution of the United States expressly requires the ratification of three-fourths of the States to give validity to all amendments of the Constitution. It is, therefore, in the power of any number over one-fourth of the smallest States, with a population of one-twentieth of the whole, to defeat any proposed amendment, in spite of the ratifications of a vast majority of the whole population of this country.

Question 21*st*—Does not each of the United States, under the Constitution, choose, by its Legislature, two Senators to the United States Senate, and has not each State, the smallest and the largest, an equal suffrage in the Senate?

Answer 21*st*—Such is the provision of the Federal Constitution, and such has always been the regular and legitimate action of each separate State.

Question 22*d*—How does each State elect its representatives to the lower House of Congress?

Answer 22*d*—Each State, under the Federal Constitution, elects its representatives to the House, as apportioned amongst the several States, according to the number of inhabitantants of that State, and they are required to be inhabitants of that very State.

Question 23*d*—How does each State appoint its electors of President?

Answer 23*d*—Each State appoints its electors of President in proportion to its representatives in both Houses of Congress (without any reference to population). This greatly increases the votes of the smaller States over the proportion of the larger ones.

Question 24*th*—May not these electors be either chosen by the people of each State or by their Legislature, or may they not be appointed by their Governors, as each State may choose to determine for itself?

Answer 24*th*—Such is the provision of the Constitution, which declares that "each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors equal to the whole number of Senators and Representatives to which the State may be entitled in Congress." (Art. 2, section 1, clause 2.) Thus the smallest States, being a great minority of the people, may elect the President. And these electors (under this provision) may be appointed by the *Governors of the States*, if the Legislatures so direct.

Question 25*th*—Is not the President, in fact and truth, the representative of the States?

Answer 25*th*—The President is chosen by the electors, who are appointed by the Legislatures of the States, and not by the people, or a majority of the people of the Union, but of the States; he is, therefore, the representative of the States.

Question 26*th*—For what purpose was the President invested with the veto power?

Answer 26*th*—The President (as shown by the debates of the Convention) was invested with the veto power for the purpose of preventing and arresting every invasion of the rights of the States by the majority votes of the House of Representatives. In fact, the States themselves thus, through this action, interpose their veto upon the unconstitutional acts of Congress.*

Question 27*th*—For what reason was the President empowered to appoint the Judges of the Supreme Court?

Answer 27*th*—The President was, by the Convention, empowered as the representative of the several United States, to appoint the Judges of the Supreme Court, who are, by the compact between the States, empowered for this reason to decide controversies between the States' themselves.

Question 28*th*—Does not the smallest State cast the same two votes in the Senate as the largest for Vice President in case of a vacancy, and does not that officer become President in case of a vacancy in that office?

Answer 28*th*—Such is the provision of the Federal Constitution, and thus the representatives of a great minority of the people may elect the President.

Question 29*th*—What does the word Federal signify?

Answer 29*th*—This title of the General Government being derived from the Latin word *fœdus*, a league, can have no other meaning than that of an alliance, league, or union of separate States. This is clearly shown by the Constitution itself, in various clauses—as, for instance, in clause 7th of Section 1st, Article 2d, which provides that "the President shall not receive any other emolument" (than his salary) "from the United States, or any of them." Again, section 2d, Article 4th, speaks of "citizens of each State" (not citizens of the United States). Again, the eleventh amendment also provides for suits "against one of the United States by citizens of another State"—thus clearly showing the distinct sovereignty of each separate State.

Question 30*th*—What does the word "union" signify?

Answer 30*th*—The word union can only mean the joining together of two or more separate things.

Question 31*st*—Can a consolidated or national government of one collective people be, in any rational sense, called a "union?"

* Mr. Calhoun also says on the subject of the veto power, "The sovereign right of the veto is inherent in the States, (*the Tribunes of our system,*) delegated to, and to be exercised by *their Representative, the President.*" Mr. Calhoun's every word is a profound thought, and

Answer 31*st*—This word necessarily, and *ex vi termini*, must signify a league, alliance, or partnership, of two or more parties. It would, therefore, be most absurd and contradictory to declare that the federal form of government is not either a compact, league or alliance of several States.

Question 32*d*—Does not the title "United States" necessarily, and of itself, imply the joining together of two or more States?

Answer 32*d*—The title "United States" is clearly the same as States United," or as the French people designate this confederacy, "*les Etats uni*," and the merest common sense would seem to repudiate the idea of "States United" being one solid nation.

Question 33*d*—Did not the Articles of Confederation also adopt the title of "United States of America," and yet declare that "each State retains its sovereignty, freedom and independence, and every power and right which is not expressly delegated to the United States in Congress assembled?

Answer 33*d*—Such is the provision of the Articles of Confederation. The Tenth Amendment of the present Constitution makes the same declaration.

Question 34*th*—What is the provision of the Constitution for suppressing insurrections and repelling invasions?

Answer 34*th*—Congress alone has the power, under clause 15, section 8 of Article 1st, to suppress insurrections and repel invasions, by calling forth the militia. The President has no such power under the Constitution, and the exercise of any such power is the very grossest usurpation.

Question 35*th*—How does the Constitution provide for suspending the writ of *habeas corpus?*

Answer 35*th*—Under clause 3d of section 9, Article 1st (defining the powers of Congress), Congress alone is authorized to suspend the writ of *habeas corpus*, in cases of rebellion or invasion, when the public safety requires it. The President has no power whatever, in any case, under the Constitution, to act upon this matter.

Question 36*th*—Does not the Constitution prohibit all confiscation of property?

Answer 36*th*—The Fifth Amendment declares that "no person shall be deprived of life, liberty or property without due process of law."

Question 37*th*—Does the Constitution allow any new State to be formed within another State?

Answer 37*th*—Section 3d of Article 4 prohibits the forming of any new State within the limits of any other State without its consent.

Question 38*th*—Did not the Constitution recognize and provide for the existence of slavery.

Answer 38*th*—The Constitution recognizes and provides for "slavery" in five or six different clauses, viz.: First, in the 3d clause, 1st section, Article 1st; secondly, in 1st clause, section 9th, Article 1st; thirdly, in 4th clause of same section; fourthly, in 3d clause, 1st section, Article 4th; fifthly, in section 1st, Article 5th.

Question 39*th*.—Does not the Constitution provide for the restitution of fugitive "slaves?"

Answer 39*th*.—Article 3, section 2, especially provides for their restitution.

Question 40*th.*—What did Daniel Webster say on this point?

Answer 40*th.*—Daniel Webster, in his great speech at Capon Springs, Va., (28th June, 1851,) declared that "if the northern States refuse wilfully and deliberately to carry into effect that part of the Constitution which respects the restoration of fugitive 'slaves,' the South would no longer be bound to observe the compact. A bargain broken on one side is broken on all sides"—thus freely admitting what he had previously been employed and paid by his constituents to deny, viz: that the Federal Constitution was a compact between the States.

Question 41*st.*—What is the language of Madison (who has been called the Father of the Constitutton) as to the character of the Government established by the Constitution?

Answer 41*st.*—Mr. Madison says, in reply to Patrick Henry's powerfully-urged objections to the adoption of the Federal Constitution by Virginia, as infringing upon the sovereignty of the States: "The principal question is whether it be a federal or a consolidated Government? Who are the parties to it (the Constitution)? The people; but not the people as composing one great body, but the people as composing thirteen sovereignties. Were it, as the gentleman asserts, a consolidated government, the assent of a majority of the people would be sufficient to its establishment, and, as a majority have adopted it already, then the remaining States would be bound by the act of the majority, even if they unanimously reprobated it themselves. Were it such a government, it would be now binding upon the people of this State without the privilege of deliberating upon it. But, sir, no State is bound by it, as it is now without the State's consent. And again, are not amendments to be ratified by three-fourths of the States, and not by a majority of the people?" Again, Mr. Madison says, in his essays in *The Federalist:* "In this relation the proposed government cannot be deemed a national one, since its jurisdiction extends only to certain enumerated objects, and leaves to the several States the residuary and inviolable sovereignty over all other snbjects."

Question 42*nd.*—What is the language of Washington in regard to the adoption and ratification of the Constitution by the several States in their separate Conventions?

Answer 42*nd.*—Washington, in one of his letters to Governor Harrison, of Virginia, at that time, says: "The disinclination of the several States to yield competent power to Congress, their unreasonable jealousy of that body, and of one another, and the disposition which seems to pervade each of being all-wise and all-powerful within itself," &c., &c.

Qrestion 43*rd.*—Does not the entire current of the decisions of the Supreme Court recognize and acknowledge the principle that the nature or system of our government is that of a league or union of so many sovereign States?

Answer 43*rd.*—Most assuredly such has been the pervading principle and doctrine of their decisions, and especially in that last most masterly, luminous and unanswerable argument of the late eminent Chief Justice Taney. (*"Inter principes facile princeps."*)

Question 44*th.*—Have not our ablest statesmen (including Rutledge, the author of the Constitution, Jefferson, Madison and Calhoun) main-

tained these same views of the Constitution and of State sovereignty?

Answer 44th.—These doctrines have been shown to be those of Rutledge, the author of the Constitution—of Jefferson, Madison and Calhoun, its ablest expounders, as well as those of the ablest of its creators in the general organic convention. Amongst other of our able statesmen, a leading member of the old conservative or Whig party in the United States Senate used the following language: "The question is not whether the States shall continue united according to the letter of the covenant by which they are bound together. It is whether they shall continue to be practically and efficiently co-operative in carrying out the great ends of the association. Whether mutual trust and confidence shall continue to animate and encourage mutual efforts in promoting common benefits, or whether mutual hatred and distrust shall step in to check all progress, to distract all endeavors for the common welfare, and to entail upon the country all the evils of endless discord. That is the question, and when you present that issue to me, I say give me separation—give me disunion—give me anything in preference to a union sustained only by power, by mere legal ties, without reciprocal trust and confidence. If our future career is to be one of eternal discord, of angry crimination and recrimination, give me rather separation with all its consequences. When the North shall, by any deliberate act, deprive the South of any fair and just and equal participation in the benefits of the Union—if the powerful North shall deliberately announce to the South, 'You shall have no more 'slave' States,' that would afford a ground or pretext with which the South might, with some reason and some assurance of the approval of the civilized world and of posterity, seek to dissolve the Union."

Question 45th.—Did not Rutledge's original draft of the Constitution commence with the names of each of the States *seriatim*, and in the order of names that had been in common use?

Answer 45th.—The first draft of the Constitution presented by Rutledge commenced with the names of each of the thirteen original States, viz: "We, the people of Massachusetts, Rhode Island," &c., &c. But this was, upon consideration, decided to be superfluous and unnecessary, as it had been resolved that the title of the Union, or confederacy of States, should be that of "United States of America;" and besides, it was considered that it would become necessary, from time to time, to add the names of additional States, as new ones might be admitted. For these reasons alone were the names of the several States omitted; and this is another sufficient answer to the position of the consolidationists, that the words "We, the people of the United States," signify the collective people of the country.

Question 46th.—Can any one be a citizen of the United States except by being a citizen of some one of the States?

Answer 46th.—It is only citizens of some one of the States that are citizens of the United States. This indisputable fact is shown by the provisions of the Constitution, which required, at its very first formation, and before the Union actually began, that the Representatives in Congress shall have been citizens of the United States (meaning, of course, citizens of some one of the States, as there had been no others at that time) for the period of seven years, and that Senators in Congress shall have been citizens of the United States for nine years. So

also the Constitution, at the inception of the Union, declares "the judicial power shall extend to controversies between a State and citizens of another State, between citizens of different States, between citizens of the same State, &c., and between a State or citizens thereof and foreign States, citizens or subjects. (Article 3, section 2.) Again, the Eleventh Amendment to the Constitution provides that "the judicial power of the United States shall not be construed to extend to any suit, &c., against one of the United States by citizens of another State, or by citizens or subjects of another State, or by citizens or subjects of any foreign State." This provision undeniably admits and avows the sovereignty of each of the States by declaring their sovereignty to be exempt from suit or prosecution by any citizen whatever of any other State or sovereignty. This declaration in the Constitution by the States themselves, that their soveaeignty was unimprired by that instrument, forms a complete answer to the doctrine of the consolidationists, that the States had, by the Constitution, surrendered and abdicated all their sovereignty.

Question 47th.—Does not the Constitvtion leave with each State the power to prescribe the qualifications of voters for members of Congress?

Answer 47th.—The Constitution declares that voters for members of Congress shall have the qualifications required by each State for electors of the most numerous branch of the State Legislature. This, of course, leaves the power with each State to vary and alter, according to their several fancy, the qualifications of voters for members of Congress.

Question 48th—Was it not proposed in the General Creating Convention to give to the Federal Government the power to use force against a sovereign State, and immediately voted down?

Answer 48th—It was on three different occasions, proposed by the Consolidation Party in the Convention to bestow upon the General Government the power to use force against any one of the States, and it was summarily rejected by large majorities. Mr. Madison indignantly denounced it as an absurd and monstrous proposition, to empower an agency to use force against one of its sovereign creators. In the course of the debate thereon, the able and distinguished statesman, Luther Martin, said: "At the separation from the British empire, the people of America preferred to establish themselves into thirteen separate sovereignties, instead of incorporatiug themselves into one. To these they look up for security for their lives, liberty and prosperity—to these alone they must look up. The Federal Government they formed to defend the weaker States against the ambition of the stronger. They are afraid to grant power unnecessarily, lest they should defeat the original end of the Union—lest the power should prove dangerous to the sovereignties of the particular States which the Union was meant to support."

Question 49th—Is it not the object of the Constitution to protect the minority from the oppressions of the majority!

Answer 49th—Such has ever been the doctrine of the ablest statesmen of every country, viz: That Consitutions are made for the purpose of restraining majorities and governments from becoming despotic and tyrannical. In other words, Constitutions are made to restrain

governments, and laws are made to restrain individuals; and majorities cannot, under Constitutions, rightfully govern, except subject to the restrictions and limitations of the Constitution. Whilst all governments derive their only rightful powers from the assent of the governed, all propositions, therefore, to employ force against a State by the general agency, or Government at Washington, must necessarily be the most direct road to disunion. For what respectable State could voluntarily consent to remain in an alliance or union of force instead of one of entire free will and unbiased choice? Whilst an alliance or union of affection, patriotism, and mutual benefit, (as it was originally intended to be.) might be "as strong as adamant," a consolidated despotism of force will prove to be too truly "a rope of sand," as being hated and abjured by every respectable and intelligent man.

Question 50th—In the case of any State deciding, through the action of its sovereign Convention, to withdraw from the Union, has the President or any branch of the General Government, any just or constitutional right to interfere with such sovereign action?

Answer 50th—It is generally contended by the consolidationists that in all cases the Presideut is bound to enforce the laws or acts of Congress, whether constitutional or not; but the simple answer to this doctrine is, that even if it be so he can only be bound in respect to the citizens of States within the Union, whilst, on the contrary, the moment a State chooses to withdraw, neither the President nor any department of the agency at Washington, has any right whatever to act in the affairs of a State which has, by that action, become a foreign State any more than to exercise jurisdiction over Mexico or any other foreign nation.

Question 51st—The sovereignty of the States having been clearly shown, 1st, by their original separate action in all their acts of sovereignty and of government, as well as by the general Declaration of Independence, proclaiming to the world that the former colonies of Great Britain were now become separate and independent States. 2d, by their remaining as such separate and independent States until the formation of the Articles of Confederation, in 1778-9. 3d, by the acknowledgments of Great Britain and France, and other nations, that the States of Massachusetts, Rhode Island, &c., &c., were each of them free, sovereign and independent States. 4th, by their separate and sovereign action in holding organic conventions, and sending delegates to the convention for forming a General Government or Confederacy of States—first, in 1778, and again in 1787—the question next arises whether these separate sovereign States have ever done any one act of abandonment, or surrender of their said separate sovereignty?

Answer 51st—It has been contended by the consolidationists that these separate States, by the creation of the Federal Constitution and Union of 1787, surrendered and yielded up their sovereignty, and became one solid nation. This is, indeed, a most gratuitous and unfounded doctrine, for there is not one single word or syllable in the Constitution, or in any other document, to support this groundless assumption, On the contrary, the whole tenor of the Constitution, as well as the Tenth Amendment, conclusively shows that the powers therein entrusted to the agency of the States at Washington, ("the Foreign Department," as Jefferson called it,) were only delegated or

granted in trust, (as the word delegated simply signifies.) The Tenth Amendment declares, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to their people." It is therefore confidently, and beyond all just controversy, maintained that the sovereign States of this Union have never, in any shape or form, or by any act of cession, given up, yielded, or surrendered, any powers whatever, except as delegated or entrusted, for certain specified and strictly defined purposes, to the general agency or government at Washington.

Question 52d—Cannot these powers, so delegated or entrusted, be recalled by the grantors.

Answer 52d—Most assuredly they can. It is an elementary principle of law that all powers of attorney or deeds of that nature conveying naked and limited powers for the sole benefit of the grantor, may be revoked at the pleasure of the grantor, unless expressly declared to be irrevocable. In addition to this plain principle of law, it is admitted even by Webster, Judge Story, and all jurists and lawyers, that if the Constitution be a compact, and be violated by any of the parties or by the grantees or trustees, it is virtually abrogated, and the parties to the compact may withdraw from its provisions. Judge Story said, "The obvious deductions which may be, and indeed have been drawn, from considering the Constitution a compact between the States, are that it operates as a mere treaty or convention between them, and has an obligatory force no longer than suits its pleasure or its consent continues." Mr. Webster declares that "if a league between foreign powers have no limitation as to the time of duration, and contain nothing making it perpetual, it subsists only during the good pleasure of the parties, although no violation be complained of. If, in the opinion of either party, it be violated, such party may say he will no longer fulfill its obligations on his part, but will consider the whole league or compact at an end, although it might be one of its stipulations that it should be perpetual," &c. In reply to the assumptions of Mr. Webster, Judge Story, and the other consolidationists, it is sufficient to show that the framers of the Constitution themselves habitually called it a compact, and applied to it no other epithet. Thus Mr. Madison, in the Convention, says: "The nature of the compact has always been so understood," &c. This term he at all times used in every debate, and in every letter and essay upon the subject. So in his celebrated Virginia Resolutions of 1798, he declares, "The powers of the Federal Government result from the compact to which the States are parties." Again, in his letter to Mr. Everett, so late as 1830, he writes: "A compact among the States, in their highest sovereign capacity," and "The parties to this constitutional compact." Gouverneur Morris, one of the strongest monarchists in the Convention, uniformly applied this term to the Constitution, declaring in his first speech that "he came here to form a compact for the good of America. He was ready to do so with all the States. He believed that all would enter into such a compact. If not, he was ready to join with any States that would. But as the compact was to be voluntary, it is in vain for the Eastern States to insist on what the Southern States will never agree to." So also the ablest and most ultra advocate for a strong government, Alexander Hamilton, repeatedly

employs the term compact. Mr. Gerry, the leading delegate of Massachusetts, says: "If nine States out of thirteen can dissolve the compact, six out of nine will be just as able to dissolve the new one hereafter," (thus fully admitting the right of secession.)

Mr. Randolph, and in fact all the Southern delegates, employed the term compact, as a matter of course, in speaking of the Constitution. Mr. Jefferson, as well in his celebrated Kentucky Resolutions as in his letters, says: "The States entered into a compact which is called the Constitution of the United States." The State of Massachusetts, in ratifying the United States Constitution, terms it "an explicit and solemn compact." Edward Pendleton, President of the Ratifying Convention of Virginia, says: "This is the only government founded on real compact." Judge Tucker, in his learned commentaries, repeatedly calls the Constitution "a compact between the States." Even Chief Justice Jay, in the great case of Chisolm *vs.* the State of Georgia, terms the Constitution a compact. So does John Quincy Adams; and even Daniel Webster himself, in the celebrated Debate on Foote's Resolutions, in 1830, says: "It is the original bargain—the compact. Let it stand; let the advantage of it be fully enjoyed. The Union itself is too full of benefits to be hazarded in propositions for changing its original basis. I go for the Constitution as it is and for the Union as it is." He then denies that the North has "any disposition to evade the constitutional compact," and yet, three years after, in the celebrated debate with Mr. Calhoun, he utterly denies that the Constitution is a compact. It having been admitted by both Mr. Webster and Judge Story that if the Constitution be in reality a compact, then each State has the right to secede, and it being now clearly shown that both the creators of the Constitution and all their contemporaries so regarded it, the right of secession is, consequently, thus admitted to be the rightful consequence.

Question 53d—Did not the Convention which framed the Constitution deliberately reject and strike ont the term "national," which was at first proposed to be the title of the new government?

Answer 53d—When the Convention of 1787 first assembled, and when a bare majority were present, a resolution was introduced, and hastily carried by a vote of only six States (a minority of the whole number), "That a national government ought to be established, consisting of supreme, legislative, judiciary and executive." But, after the delegates of the other States had arrived, this resolution was reconsidered and rescinded, and the title was by unanimous vote changed to that of "the Government of the United States," so that the title "national" was unanimously rejected. The journals of Mr. Madison, Mr. Yates and Mr. Elliott all concur in reporting this unanimous rejection, and yet Mr. Webster and Judge Story build their argument mainly upon this unanimously rejected epithet of "national," merely because it was the first resolution, hastily, and by six votes adopted at the first assembling of the Convention.

Question 54th—Does not the Constitution provide for and guarantee the equality of all the States?

Answer 54th—The Constitution declares that no State shall be deprived of its equality in the Senate without its own consent. The debates again and again declared the States to be "co-equal sovereign-

ties." All the other States together cannot alter this provision without the consent even of Delaware. If they should deprive her of this sovereigh right, she certainly would have the right to withdraw. See De Tocqueville's great work on America in which he says each State may withdraw, and if a State withdraws, she becomes a sovereign State, and the acts of her citizens, in case of war, are acts of war and not of treason.

Question 55th—Did not each of the States secede from the old Confederation, and is the present Union any more sacred and binding than the former?

Answer 55th—The thirteen original States separately withdrew (or seceded) from the old Confederacy of 1778-9, and formed the "new articles of Union," as Mr. Madison at that time designated the present Constitution, although the former articles had expressly declared themselves to be "perpetual." The right of secession was at that time just as strenuously denied at the North as it is at the present time, and Mr. Madison devoted himself, in *The Federalist*, to vindicating the right of each or any of the States to secede from the then existing Union, although he says there was a time when it was proper to veil this right of secession. So in the present day, it was at one time proper to veil this right of secession from the present Union, but at last the gross violations ot the Constitution by a sectional majority rendered it necessary for the South both to unveil and to exercise this constitutional right to withdraw from the "new articles of Union," which were not declared to be perpetual. If our ancestors were not traitors in seceding from a Union, contracted and guaranteed to be "perpetual," how can the southern States be denominated traitors at the present day? The unveiling the truth now (as Mr. Madison did in the last century,) must vindicate the South from such foul aspersions, especially when it is remembered that the States of New York, Rhode Island and Virginia, in their ratifications of the Constitution of the United States, expressly reserved the right "to reassume the powers delegated whenever they should be perverted to the injury of the people." This is simply and clearly the right of secession, and as these States were admitted into the Union, partnership, or alliance, with this condition precedent annexed, such condition became, of course, a part of the contract, or Constitution itself. But, even without this condition, is it not obvious to common sense that sovereign States have the same right to withdraw from an alliance or partnership as they had to enter it, and by the same process, viz.: through their organic, government-making Constitution-maktng Conventions, in which alone thetr sovereignty is embodied? How absurd it seems to admit, in the case of individuals, the right of withdrawing from a partnership, and yet to deny the same right to sovereign States, and especially in this country, where the right of self-government has been always regarded as the fundamental and most sacred right of the people of every State on earth, and the denial of which has hitherto been denominated the most intolerable despotism! In this glorous cause, Washington wasthe greatest of rebels, and all who follow in his footsteps may well boast of their great exemplar.

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